UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

TRIDENT STEEL CORP.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 4:09-cv-01332 TCM
	)	
OXBOW STEEL, LLC, et al.	)	
	)	
Defendants.	)	

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER VENUE

A. Introduction

The lawsuit presently before this Court has been squarely joined, and is progressing. On May 13, 2009, Plaintiff Trident Steel Corp. ("Trident") brought suit against Oxbow Steel International ("Oxbow") and Mark Steel International ("Mark Steel") in St. Louis County, Missouri (the "Missouri Action"). After removing the Missouri Action to this Court, Oxbow and Mark Steel jointly filed their Answer, as well as Counterclaims against Trident. *See* Defs. Answer and Counterclaims [Docket No. 6]. This Court has personal jurisdiction over both defendants and venue is proper in Eastern District of Missouri.

Defendants, however, ask this Court to transfer the matter to the Central District of California, the present situs of a *later-filed* suit regarding identical subject matter, brought by Oxbow, as sole plaintiff, against Trident (the "California Action"). *See* Motion to Transfer Venue and Memorandum in Support [Docket Nos. 7 and 8]. Because the United States District Court for the Central District of California lacks personal jurisdiction over Trident, and because the Central District of California is an improper venue, Trident filed a motion to dismiss the California Action. *See* Motion to Dismiss and Memorandum in Support, filed in the Central

District of California, attached hereto as Exhibit A. Trident's Motion to Dismiss is currently pending before the Hon. George King of the Central District of California.

While the transactions underlying both parties' lawsuits have strong connections to Missouri and Texas, they are at best only tangentially connected to California. As there are no grounds that have been presented to this Court that merit transferring this matter from Missouri to California, Defendants' Motion to Transfer should be denied.

B. Facts

Both the Missouri and California Actions involve certain steel line pipe ("Line Pipe") and oil country tubular goods ("OCTG") (collectively, the "Goods") orders placed by Trident. Trident ordered these Goods by sending Purchase Orders ("POs") to Nicole Dijak of Heights Trading, Inc. ("Heights Trading"), a trading company located in Houston, Texas. *See* Declaration of Kevin Beckmann ("Beckmann Dec."),¶ 4, attached hereto as Exhibit B.[1] Ms. Dijak worked as a sales agent for Mark Steel, which in turn acted as Oxbow's agent. Exhibit B at ¶ 5. Oxbow ordered the Goods from Asian manufacturers. *See* Def. Mem. in Sup., at 12; Exhibit B at ¶ 6. All of the Goods were to be shipped to Houston, Texas for delivery to Trident. *See* Def. Mem. in Sup., at 9-10 and 12; Exhibit B at ¶ 6.

The Trident Line Pipe POs each specified that the Line Pipe must be free of inside diameter ("ID") contamination, residue, and oil and suitable for fusion bond epoxy ("FBE") coating. *See* Am. Pet., attached to Def. Not. of Rem. [Docket No. 1-2], at 2-3; Exhibit B at ¶7. The Line Pipe delivered to Houston, Texas was inspected in Houston and found to have ID contamination making it unsuitable for FBE coating, as well as numerous other defects. Trident rejected the Line Pipe. Exhibit B at ¶ 7.

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[1] Trident sent some of the POs to Ms. Dijak/Heights Trading in Texas, and Ms. Dijak forwarded them on to Mark Steel in California. Other POs were sent to Heights Trading, and at Ms. Dijak's request, Mark Steel was copied. Exhibit B at ¶ 5.

Each of the Trident OCTG POs at issue contained an express date for Houston, Texas delivery. Exhibit B at ¶ 8. Every specified delivery date was missed, a fact admitted by Ms. Dijak, both orally and in writing. Exhibit B at ¶ 8, *see also* email correspondence from Nicole Dijak to Kevin Beckmann, dated March 2, 2009, attached hereto as Exhibit C. Because timely delivery OCTG did not occur, Trident rejected the OCTG and cancelled its orders. *See* correspondence from Kevin Beckmann to Mark Ono and Nicole Dijak, dated March 17, 2009, attached hereto as Exhibit D.

Prior to rejection, Trident paid for a portion of the Goods. Exhibit B at ¶ 9, *see also* correspondence of Defendants' counsel, Michael J. Whitton, dated April 30, 2009, attached hereto as Exhibit E.[2] Trident also incurred damages such as inspection charges. *See* Innova inspection reports, dated February 17, 2009, attached hereto as Exhibit F; correspondence from Womble Company Inc. to Hope Snow, dated February 26, 2009, attached hereto as Exhibit G**;** same attached to Brockland Dec. in Sup. of Def. Mot. to Trans. [Docket No. 8-3], at 19. Thus, Trident filed a lawsuit in the Circuit Court for St. Louis County seeking (a) damages for Defendants' failure to deliver conforming goods (including UCC-allowed damages and Trident's out-of-pocket expenditures), and (b) a declaratory judgment that Trident did not owe the balance of the alleged purchase price. *See generally* Am. Pet., attached to Def. Not. of Rem. [Docket No. 1-2]. Oxbow then filed a mirror-image lawsuit in the United States District Court for the Central District of California seeking: (a) a declaratory judgment that it can keep the money Trident already paid; and (b) damages for the amount Oxbow claims Trident still owes. *See* Complaint

[2] Substantial portions of some of the exhibits have been redacted due to concerns about putting evidence of settlement negotiations before the Court. Should the Court require unredacted copies of these exhibits, Trident will provide them.

filed in the Central District of California, attached to Brockland Dec. in Sup. of Def. Mot. To Trans [Docket No. 8-3], at 57-65.

C. Argument

Defendants seek a transfer of the Missouri Action to the Central District of California pursuant to 28 U.S.C. Section 1404(a). For the reasons set forth below, their request should be denied.

1. The Central District of California is Not a Proper Transferee District.

Defendants have the "burden of proving that transfer is warranted." *Buckeye Int'l, Inc. v. Unisource Worldwide, Inc.*, No. 4:05CV0839 TCM, 2005 WL 2406026, at *2 (E.D. Mo. Sept. 28, 2005). That burden includes, as a threshold matter, Defendants demonstrating that this lawsuit could "otherwise…have been brought" in the Central District. *See* 28 U.S.C. § 1404(a); *see also, e.g., DeKalb Genetics Corp. v. Syngenta Seeds, Inc.*, No. 4:06CV01191 ERW, 2006 WL 3837143, at *1 (E.D. Mo. Dec. 29, 2006); *Intercoast Capital Co. v. Wailuku River Hydroelectric L.P.*, No. 4:04-CV-40304, 2005 WL 290011, *9 (S.D. Iowa Jan. 19, 2005). Defendants must show both that personal jurisdiction exists over Trident in the Central District of California, and that it is a proper venue. *See id.*, *Hoffman v. Blaski*, 363 U.S. 335, 344 (1960); *McAdoo v. Union Nat'l Bank of Little Rock*, 558 F.2d 1313, 1316 (8th Cir. 1977).

Defendants cannot meet that burden. The Central District Court lacks personal jurisdiction over Trident, and venue is not proper there under either 28 U.S.C. Section 1391(a) or (b). Because Trident has fully briefed these issues in its currently-pending Motion to Dismiss, Trident will only summarize its arguments here. *See generally* Exhibit A.

a. The Central District Lacks Personal Jurisdiction over Trident.

General personal jurisdiction over Trident does not exist in the Central District of California. None of the traditional factors associated with a finding of such general jurisdiction exist: Trident has no offices, bank accounts, real property, business registration, or employees in California. *See* Exhibit A, Mem. in Sup., at 3; Exhibit B at ¶ 15. Trident's employees have not visited California to arrange purchases or facilitate sales. *See* Exhibit A, Mem. in Sup., at 3; Exhibit B at ¶ 14.

Defendants raise two alleged contacts that, they claim, suffice to demonstrate general personal jurisdiction in California: Trident's alleged business relationship with Pusan/SeAH, a California corporation having no corporate affiliation with Defendants, and Trident's alleged business relationship with Oxbow. *See* Def. Mem. in Sup., at 11. Defendants also allege that Trident is "currently defending" a California lawsuit brought by SeAH. *Id.*

Defendants apparently failed to check the accuracy of their claims regarding the *SeAH* litigation prior to filing their Motion to Transfer on August 26, 2009. If they had checked, they would have discovered that *SeAH* was dismissed on August 20, 2009, pursuant to an amicable confidential settlement between the parties thereto. *See* certified copy of the court docket, attached hereto as Exhibit H. Moreover, Trident's status as a defendant in the *SeAH* litigation is not an appropriate consideration in a determination of whether personal jurisdiction exists here over Trident. *DeKalb*, 2006 WL 3837143, at *4 (quoting *U.S. v. Subklew*, 2001 WL 896473, at *3 (S.D. Fla. June 5, 2001) ("'a party's initiation or defense of a legal action in Florida does not provide personal jurisdiction over that party in a separate suit…even where…the later suit arises from the subject matter that is similar to the earlier suit'").

Moreover, the *SeAH* Court, in response to Trident's motion to dismiss for lack of personal jurisdiction, did not find that the alleged SeAH contacts led to a finding of general personal jurisdiction. *See* Declaration of Gloria E. Labbad ("Labbad Dec."),¶ 10, attached hereto as Exhibit I. Rather, the SeAH Court found only "specific" personal jurisdiction over Trident based upon the Court's analysis of the specific contacts between SeAH and Trident. Exhibit I at ¶ 10. While Trident respectfully disagrees with the *SeAH* Court's ruling, Trident's contacts with SeAH did not give rise to a valid claim of "general" personal jurisdiction. A copy of the *SeAH* Court's April 7, 2009 Order is attached hereto as Exhibit J. The fact that Trident had "some" contact with California brokers – whether SeAH, Mark Steel, or even Oxbow[3] – does not support a finding of general personal jurisdiction.

Defendants also claim that specific personal jurisdiction over Trident is proper in California. Trident disagrees. As more fully set forth in Trident's Memorandum in Support of its Motion to Dismiss, the transactions at issue only tangentially involve California because the overwhelming majority of Trident's dealings were with Texas-based Heights Trading, and the Goods were delivered to Houston. Exhibit A, Mem. in Sup., at 2; Exhibit B at ¶¶ 6, 12. The fact that Mark Steel served as a way-station for Trident POs doesn't mean that Trident could reasonably anticipate being sued in a California court.

Finally, the Central District of California is not a proper venue. To the extent Defendants purport to rely upon 28 U.S.C. Section 1391(a) to support venue, then the Central District of California must be considered to be its own "state" for the purposes of determining "residence"; therefore, Oxbow's purported presence in Northern California[4] cannot be considered. *See* 28 U.S.C. § 1391(c). Accordingly, only Mark Steel's tangential contacts with Trident – consisting of Mark Steel's act of forwarding Trident POs on to Oxbow – remain to allegedly support "residence" for Section 1391(a)'s purposes. This contact with the Central District of California falls woefully short. Likewise, Mark Steel's act of forwarding POs that were initiated by a combination of contacts between Houston-based Ms. Dijak/Heights Trading and St. Louis-based Trident for the Goods which were to be produced in Asia and delivered to the port of Houston, Texas is far from the "substantial" connection required by Section 1391(b).

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[3] While Oxbow claims a Northern California presence, it is a Delaware limited liability company that lists its official address in Florida. Exhibit I at ¶ 11; see also a copy of the screenshot from the California Secretary of State's website attached hereto as Exhibit K. Oxbow's purported Terms & Conditions, moreover, specify Florida venue. *See* Oxbow's Terms and Conditions,, attached to the Catterlin Dec. in Sup. of Def. Mot. to Trans. [Docket No. 8-2], at 31.

[4] Oxbow pleads that it has a "principal place of business" in Pleasant Hill, California. According to the publically-available resource, Google Maps, Pleasant Hill is near San Francisco, CA, and within the judicial district served by the United States District Court for the Northern District of California. Thus, while the trip from San Francisco to Los Angeles might be shorter than from San Francisco to St. Louis, there is no evidence that Oxbow's purported witnesses *reside* in the judicial district to which Defendants seek transfer.

Defendants fail to meet their burden of demonstrating that the Central District of California is a forum in which this suit "could otherwise have been brought," and Defendants' Motion to Transfer should be denied.

2. Defendants Fail to Meet Their Burden to Show that Section 1404(a)'s Factors Merit Transfer.

In a Section 1404(a) analysis, "great weight" must be given to Trident's choice of venue. *Buckeye*, at *2 (quoting *Anheuser-Busch, Inc. v. City Merchandise*, 176 F.Supp. 2d 951, 959 (E.D. Mo. 2001)). Put otherwise, Defendants must make a "clear showing" that the balance of interests merits transfer. *Anheuser-Busch, Inc.*, 176 F.Supp. 2d at 959. Nothing found in either the text of Section 1404, or the policy it embodies, justifies transfer from a proper venue selected by a plaintiff merely because of a defendant's purported inconvenience. *See Nordyne, Inc. v. Flick Dist., LLC,* No. 4:09CV0055 TCM, 2009 WL 1508778, at *5 (E.D. Mo. May 28, 2009) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 633-34 (1964)). When the parties reside in different states, it is a given that no forum will avoid inconvenience to someone; transfer is only warranted here if the balance tips well in Defendants' favor that the Central District of California is a more convenient forum. *See, e.g., Nordyne,* at *5 (citing cases).

a. The Relevant Section 1404(a) Factors to Consider.

In considering whether Defendants meet their burden, this Court must address at least three issues: witness convenience, party convenience, and the interests of justice. *See, e.g.*, *Buckeye*, at *2. Of these three, witness convenience is generally the most important. *See id.*

b. Transfer to the Central District Would Substantially Decrease Witness Convenience.

Witness convenience should focus not on numerical headcounts, but rather on the location of those witnesses who "must be 'substantially part of the case itself, as they relate to the occurrence of an accident or incident.'" *Id.* (quoting *Wilson v. Ohio River Co.*, 234 F.Supp. 283, 285 (W.D. Pa. 1964). Few, if any, witnesses meeting this requirement of substantial involvement resides in the Central District of California. At least two substantial witnesses, Kevin Beckmann and Hope Snow, work for Trident in St. Louis County.[5] Both are expected to testify as to the negotiation of, and entry into, the POs, as well as the reasons for rejection of the Goods, Trident's partial payment for same, the reported condition of the Goods, and Trident's damages. Exhibit B at ¶ 17. Both Beckmann and Snow, moreover, are expected to testify that the vast majority of their pre-settlement dealings and communications[6] were with Oxbow's sub-agent, Nicole Dijak. *Id.* at ¶ 18. Ms. Dijak, located in Houston, is thus also a substantial witness, and is expected to testify as to her communications and dealings with Trident on behalf of Mark Steel and Oxbow. *Id.* at ¶ 18**.** Because the Goods were delivered to, and inspected in, Houston, Texas, Trident also expects that substantial testimony will be elicited from one or more representatives of Innova, a Houston-based company that served as Trident's independent inspection service. Anticipated testimony will cover the condition of that portion of the Goods inspected and found to be defective. *Id*. at ¶ 19; *see also* Exhibit F. Trident also anticipates that one or more representatives of Womble, another Houston company that stored the Line Pipe, and provides FBE coating for the pipe, may testify as to the suitability of the Line Pipe at issue. Exhibit B at ¶ 20; *see also* Exhibit G. Finally, Trident understands that Defendants hired another Houston-based inspection service, representatives of which may opine on the Line Pipe's condition. Exhibit B at ¶ 21. While Mark Steel may claim that one or more of its employees are significant witnesses, they really only appeared on the scene during settlement discussions.

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[5] Other Trident employees *may* be witnesses; Trident will focus on the truly important witnesses.

[6] In 2009, Trident had more substantive conversations with Mark Steel during the course of settlement negotiations.

Thus, most of the witnesses whose convenience should be considered are located in either St. Louis County, Missouri, or Houston, Texas. Transferring this matter to Los Angeles substantially increases the burden on the Missouri witnesses, and increases the distance from Houston to the courthouse. Moreover, there is no colorable argument that securing testimony from Houston-based witnesses will be easier if this case is pending in Los Angeles.

Defendants cite to other witnesses whose convenience they claim the Court should consider. Notably, Defendants provide no summary of their expected testimony, an omission that is both telling and weighs against consideration of Defendants' contentions. *See, e.g.*, *Nordyne*, at *6 (quoting *American Standard, Inc. v. Bendix Corp.*, 487 F.Supp. 254, 262 (W.D. Mo. 1980) ("Defendants have not provided a statement of what any of their witnesses testimony will be…'if the party moving for transfer…merely makes a general allegation that witnesses will be necessary, without identifying those necessary witnesses and indicating what their testimony at trial will be, the motion for transfer based on convenience of witnesses will be denied'").

Defendants identify two Oxbow witnesses, Ron Saca and William Linton. Trident does not believe that it ever dealt with either of them during the pre-settlement phase of this matter. Defendants also identify three Mark Steel employees: Catterlin, Ono, and Iwama. Trident had, at best, a smattering of dealings with Catterlin, Ono, and Inwama prior to settlement discussions. Exhibit B at ¶ 12. Notably, all three of these Mark Steel employees traveled to Missouri to meet with Trident and discuss settlement in March, 2009.

In short, Defendants fail to carry their burden of demonstrating that the balance of witness convenience – the "most important" factor – even implicates California, let alone tips the scales toward transfer to Los Angeles.

c. Convenience of Parties.

Defendants pay scant attention to the "convenience of parties" factor, and with good reason: Mark Steel is in Los Angeles, Oxbow is either in West Palm Beach, Florida or a suburb of San Francisco, and Trident is in St. Louis County, Missouri. Any chosen venue will be "home" to one, and "away" to the others. The few relevant documents (a handful of emails, invoices, POs, Sales Acknowledgements, and inspection reports) are easily copied and exchanged from any locale. The Goods themselves are located in Houston. Thus, Defendants fail to meet their burden to demonstrate that the parties' convenience points to Los Angeles.

d. Interests of Justice.

The traditional "interests of justice" considerations include "judicial economy, the plaintiff's choice of forum, the comparative costs to the parties in litigating in each forum, obstacles to a fair trial, and the advantages of having a local court determine questions of local law." *Nordyne*, at *7 (internal quotations omitted). Of these factors, plaintiff's choice of forum is Missouri. Judicial economy also favors a Missouri forum, as all parties (Trident, Oxbow, and Mark Steel) are before this Court, while Mark Steel is not even a party to the California Action brought by Oxbow. Indisputably, litigation in California is more expensive for Trident, while litigation in Missouri is more expensive for Defendants.[7] Neither forum presents any obstacles to a fair trial. Finally, Trident believes that Missouri law would apply to this dispute; Defendants

[7] Although it is likely that local counsel hourly rates are lower in St. Louis than in Los Angeles.

contend that California law applies, though Oxbow's terms and conditions reference application of Florida law. *See* Brockland Dec. in Sup. of Def. Mot. to Trans. [Docket No. 8-3], at 90. Even if California law is ultimately determined to control, this Court has previously observed that it is fully capable of applying non-Missouri law. *See Nordyne*, at *8. In short, at least two factors favor Missouri, and none truly favor California.

Defendants, however, articulate a unique, but incorrect, group of considerations. Some of the purported factors are factually incorrect, others are plainly false, and none are relevant.

Defendants argue that Trident has no damages. This claim – more appropriately addressed by a summary judgment motion – is flatly incorrect. Trident has pled several causes of action for damages. Defendants cite no authority that even suggests that it would be proper to adjudicate the merits of those claims in the context of a Section 1404(a) Motion to Transfer. Trident's well-pled claims should be taken as true for purposes of this Motion. *See, e.g., Connor Pension Corp. Defined Ben. Plan v. Goodnight Cattle Co. LLC.*, No. C08-0010, 2008 WL 2553197, at *8 (N.D. Iowa June 25, 2008) ("[i]n determining a motion to transfer venue, courts accept all well-pleaded allegations in the complaint as true").[8]

Even if the Court were to look behind Trident's allegations, Defendants' argument lacks merit. Defendants contend that Trident has no damages because Trident has submitted debit memos representing amounts Trident claims were paid to Defendants for rejected Line Pipe.

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[8] Defendants cite to several cases that, they claim, support the transfer of this lawsuit because Trident filed a declaratory judgment action. *See* Defs. Mem. in Sup., at 4-5, 9 (*citing Anheuser Busch, Inc. v. Supreme Int'l Corp.* 167 F.3d 417 (8th Cir. 1999); *Nw. Airlines, Inc. v. Am. Airlines, Inc.*, 989 F.2d 1002 (8th Cir. 1993); *Hyatt Int'l Corp. v. Gerardo Coco*, 302 F.3d 707 (7th Cir. 2002); *Marvin Lumber & Cedar Co. v. S&S Sales Corp.*, No. 06-C-105-S, 2006 WL 1236783 (W.D. Wis. May 6, 2006); *Soroka v. Lee Techs. Servs.* No. 1:06-0710, 2006 WL 1734277 (N.D. Ga. June 19, 2006)). In each of these cases, however, the first-filed lawsuit was solely an action for declaratory judgment. Unlike Trident in the case before this Court, the first-filing plaintiff in each of these cases did not file multiple claims for damages. Thus, none of these cases stand for the proposition that this Court should summarily adjudicate Trident's damages claims or indulge in any presumption that Trident's lawsuit is "really only for declaratory judgment" despite the claims Trident actually pled.

This argument wholly ignores several important matters. First, Trident has claims for damages for rejected goods. For example, Uniform Commercial Code Section 2-713 (codified in Missouri as RSMo § 400.2-713) provides damages for the difference between the market and the contract price of rejected or non-delivered goods. In addition, Trident has claims for its other costs incurred with respect to the Line Pipe, such as inspection charges. *See* Exhibits F and G.

Even if Trident's sole damages claim were for return of the partially paid purchase price, Defendants' "no damages" argument is incorrect. Defendants are correct that Trident issued debit memos (i.e. offsets) for the partial purchase price paid. If honored by Oxbow, those debit memos would have served to reduce amounts Trident owed on other invoices that are not part of this suit. But Oxbow has repeatedly refused to honor those debit memos. For example, On April 9, 2009, Oxbow "denied" Trident's debit memos or alternative request for refund. *See* Catterlin Email, April 9, 2009, attached hereto as Exhibit L. On April 30, 2009, Oxbow's lawyers again told Trident that these funds would be applied to reduce Oxbow's alleged damages. *See* Exhibit E. Thus, at the time Trident filed its Petition, Oxbow's stated position was that Trident was not entitled to credit for, or return of, the partial payment already made for Goods. Oxbow's position did not change. On July 17, 2009, just days before Oxbow filed its Complaint in California, Trident wrote Oxbow, noting that Oxbow was still refusing to recognize Trident's claim for offset. *See* Letter of Kevin Beckmann, dated July 17, 2009, attached to the Catterlin Dec. in Sup. of Def. Mot. to Trans. [Docket No. 8-2], at 38.

Oxbow craftily pleads around this issue. In their Counterclaims, for example, Defendants plead that "Trident is now trying, after the fact, to apply funds it paid for the Line Pipe Orders to other open invoices with Oxbow…" Defs. Answer and Counterclaims [Docket No. 6], at 27 (emphasis added). Likewise, the Catterlin Dec. attached to Oxbow's Motion to Transfer is careful to state that Trident has "credited" these amounts against other open invoices, without stating that Oxbow has, in fact, accepted those offsets. *See* Catterlin Dec. in Sup. of Def. Mot. to Trans. [Docket No. 8-2], at 3, ¶ 14. In fact, Oxbow repeatedly alleges that Trident either had no right to reject the Line Pipe, or that Oxbow should have been allowed to cure the Line Pipe's defects. *See*, *e.g.*, Counterclaims, at ¶¶ 24, 26, 33, 38, 41, 45.[9] Trident has a good faith basis to claim damages, both at the time it filed its Petition, and now.

Defendants also take issue with the timing of Trident's Petition. Defendants attempt to inject the same "race to the courthouse" arguments that this Court has previously rejected as irrelevant to a Section 1404(a) analysis. *See Nordyne*, at *3, n. 8 ("Defendants characterize Plaintiff's filing of this lawsuit as a "Race to Court"…the Court will not address these arguments as they are not necessary to the Court's resolution of the issues presented by Defendant's motion…"). The simple truth is that, during the course of settlement negotiations, both sides mentioned the possibility of legal claims. *See*, *e.g.*, Exhibit E, at 2; and correspondence from Kevin Beckmann to Nicole Dijak, dated May 2, 2009, attached hereto as Exhibit M. At a low point in the settlement negotiations, Trident elected to file suit. Trident didn't ask Defendants' permission, just as Defendants filed their California suit without first notifying Trident. When the prospects for settlement appeared to brighten, Trident elected to hold off on service in order to foster settlement. In fact, Trident believed that settlement discussions were ongoing when Defendants' process server unexpectedly showed up at Trident's St. Louis County office.

Defendants accuse Trident of "gamesmanship" with respect to Trident's filing its Petition. Def. Mem. in Support, at 9. Defendants' accusations are ironic. Defendants chose to file in Los Angeles, a forum with no material connection to this lawsuit. *See* Exhibit A, Mem. in Sup., at 2-3. Oxbow, the sole California plaintiff, isn't located there, and neither is Trident. In fact, the Central District of California's only tangential connection to this dispute is that Mark Steel – *not even a party to the suit filed by Oxbow* – acting as Oxbow's sales agent, was a conduit for Trident POs traveling from Ms. Dijak, in Houston, Texas, to Oxbow.

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[9] It is difficult to logically reconcile the argument that Defendants now seems to suggest: that Trident is entitled to a refund of the amounts it already paid for the rejected Line Pipe (i.e. Trident has no damages), but Defendants are entitled to the balance of the rejected Line Pipe purchase price (i.e. award Defendants damages).

Defendants also repeatedly mention the Hon. George King, claiming "judicial economies" resulting from the pendency of the *SeAH* case. This argument assumes: (a) that the *SeAH* case is pending; and (b) some significant relationship between the *SeAH* case and this matter. Both assumptions are manifestly incorrect.

First of all, the *SeAH* case has been dismissed. *See* Exhibit H. Secondly, there is no meaningful relationship between the *SeAH* case and the present case. While the *SeAH* case did involve Line Pipe (a commodity product), it centered on Trident's exercise of its contractual right to cancel without cause, unlike the present dispute involving defective goods and late tender. *See* Exhibit I, ¶¶ 4, 8. Thus, the *SeAH* case and the present dispute do not arise from the same transaction or occurrence and do not involve substantially related questions of law and fact. Moreover, there is absolutely no evidence of any corporate connection between SeAH and either Oxbow or Mark Steel. Exhibit I, ¶ 9. Accordingly, the former *SeAH* case is of no moment to the present dispute.

How Oxbow's California Action came before Judge King, however, raises troubling issues. As previously mentioned, Oxbow, the sole plaintiff in the California Action, is not a resident of the Central District. Despite the fact that the *SeAH* case involved a plaintiff with no connection to Oxbow, and involved different issues from the issues here, Oxbow chose to represent to the California Court that its Complaint was a "related" filing to the *SeAH* case. *See*

Exhibit I, ¶¶ 7-9. This false claim caused Oxbow's Complaint to be transferred from the Hon. George H. Wu to Judge King. Oxbow's filing in an improper venue, and false claim of "related" case status, are at least suggestive of both forum shopping and judge shopping. Oxbow, in short, should not be tossing out allegations of "gamesmanship."

D. Summary

Despite the distractions Oxbow has proffered, the appropriate analysis is straightforward. This suit currently lies in a proper venue, and the Court has jurisdiction over both Defendants. All parties are before this Court, and claims are filed. The Central District of California, on the other hand, is not a proper venue, and the court there lacks personal jurisdiction over Trident. Transfer of this case is not warranted on the basis of witness or party convenience or the interests of justice. Accordingly, Defendants' Motion should be denied.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served via the Court's electronic filing system on September 3, 2009.

/s/ F. Scott Galt